

JS 44 (Rev. 07/16)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

DAN SCHANTZ FARM & GREENHOUSES, LLC

(b) County of Residence of First Listed Plaintiff **LEHIGH**
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

FITZPATRICK LENTZ & BUBBA, PC
4001 Schoolhouse Lane, Center Valley, PA 18034 (610)797-9000

DEFENDANTS

DAVID J. CATANZARO

County of Residence of First Listed Defendant **LACKAWANNA**
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. §§ 2201, 2202

Brief description of cause:

Declaratory Judgment of Patent Invalidity, Non-Infringement and Unenforceability

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

01/27/2017

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAN SCHANTZ FARM & GREENHOUSES,
LLC,

Plaintiff,

v.

David J. Catanzaro,

Defendant

:
:
:
:
:
:
:
:
:
:
:

Docket No.

JURY DEMAND

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, Dan Schantz Farm & Greenhouses, LLC (“DSF&G” or “Plaintiff”), by its attorneys, Fitzpatrick Lentz & Bubba, P.C., files the instant Complaint against the Defendant, David J. Catanzaro (“Catanzaro” or “Defendant”) for, *inter alia*, declaratory judgment under 28 U.S.C. §§ 2201 and 2202, and, in support thereof, avers as follows:

NATURE OF THE ACTION

1. This is an action for declaratory judgment pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. DSF&G seeks declaratory judgment that the claims of U.S. Patent 7,653,959 (“the ‘959 Patent”) are not infringed by DSF&G and/or are invalid under one or more of the provisions of 35 U.S.C. §§ 101, 102, 103 and 112. An actual controversy over the infringement, validity and enforceability of the ‘959 Patent exists between DSF&G and Catanzaro, as evidenced by the allegations of Catanzaro detailed below.

THE PARTIES

2. Plaintiff Dan Schantz Farm & Greenhouses, LLC is a limited liability company organized under the laws of the Commonwealth of Pennsylvania, with a principal place of business at 8025 Spinnerstown Road, Zionsville, Pennsylvania 18092.

3. On information and belief, Defendant David J. Catanzaro is an individual residing in the Commonwealth of Pennsylvania at 286 Upper Powderly Street, Carbondale, Pennsylvania 18407.

JURISDICTION AND VENUE

4. Plaintiff's claims arise under the patent laws of the United States, 35 U.S.C. §§ 1, et seq., and the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. This Court has jurisdiction over the subject matter under 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Catanzaro because Catanzaro is domiciled in the Commonwealth of Pennsylvania.

6. This Court further has personal jurisdiction over Catanzaro because Catanzaro has conducted business in the Commonwealth of Pennsylvania by systematically and continuously availing himself of the federal district courts of the Commonwealth to exploit the '959 patent.

7. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to this claim occurred in this judicial district.

CONTROVERSY BETWEEN THE PARTIES

8. An actual and justiciable controversy exists between DSF&G and Catanzaro as to whether the claims of the '959 Patent, attached hereto as **Exhibit A**, are infringed by DSF&G, whether the '959 Patent is invalid, and whether the '959 Patent is enforceable.

9. On January 11, 2017, a man contacted DSF&G by telephone and stated that DSF&G was infringing a patent that the man owned.

10. The caller identified himself as "David." The caller refused to provide additional personally identifying information or to identify the patent alleged to be infringed.

11. The caller identified the accused products as the 2 Qt. Poinsettia Santa and 2 Qt. Poinsettia Elf products shown here:



12. The caller stated that in exchange for execution by DSF&G of a “Litigation Standstill Agreement” (“LSA”), the caller would disclose “all pertinent information” in connection with the allegation of patent infringement.

13. On January 13, 2017, “David” sent an email to DSF&G from davemts1213@gmail.com, further identifying the sender as “David Joseph,” and attaching the proposed “LSA.” The LSA contemplates a 30-day discussion period between the parties and agreements not to sue or otherwise seek declaration of invalidity of the patent during such period.

14. On January 18, 2017, counsel for DSF&G received a telephone call from a man identifying himself as “Dave.” The caller stated that he had previously filed suit for infringement of his patent and had entered into numerous license agreements as a result thereof.

15. Searches of publicly available information reveal that Defendant Catanzaro has filed numerous suits for infringement of U.S. Patent No. 7,653,959 (“the ‘959 Patent”). See **Exhibit B**.

16. Searches of publicly available information reveal that Defendant Catanzaro has contacted other parties to allege infringement of the ‘959 patent, refusing to provide full information regarding his identity or the identity of the patent and demanding execution of a “litigation standstill agreement” contemplating a 30-day discussion and non-suit period. See **Exhibit C** at ¶¶ 13-14.

17. Exhibit B to **Exhibit C** further identifies Defendant Catanzaro as David Joseph Catanzaro and refers to “a few settlement/licensing agreements I have already obtained.”

18. On information and belief, Defendant David J. Catanzaro is the caller, “David.”

COUNT I

(Declaratory Judgment of Non-Infringement)

19. Plaintiff incorporates by reference Paragraphs 1-18, above, as if fully set forth herein.

20. DSF&G has not infringed, nor is it infringing, directly or indirectly, any claim of the '959 Patent.

COUNT II

(Declaratory Judgment of Invalidity)

21. Plaintiff incorporates by reference Paragraphs 1-20, above, as if fully set forth herein.

22. Each claim of the '959 Patent is invalid and unenforceable for failure to satisfy the requirements for patentability under Title 35 of the United States Code, including the respective provisions of §§ 102, 103, and 112.

23. Without limiting the allegations of this Complaint, each claim of the '959 patent is invalid and unenforceable in view of the prior art shown in **Exhibit D**, hereto:

- a. One or more claims of the '959 Patent is invalid and unenforceable as anticipated or obvious in view of *Bowl with Human Feet*, produced ca. 3900–3650 B.C.
- b. One or more claims of the '959 Patent is invalid and unenforceable as anticipated or obvious in view of *Grimace*, produced ca. 1985.
- c. One or more claims of the '959 Patent is invalid and unenforceable as anticipated or obvious in view of Kellogg Company bowls and cups, produced ca. 1981.
- d. One or more claims of the '959 Patent is invalid and unenforceable as anticipated or obvious in view of Milton Bradley *Bash*, produced ca. 1965.
- e. One or more claims of the '959 Patent is invalid and unenforceable as anticipated or obvious in view of Carlton Walking Ware, produced ca. 1980.

COUNT III

(Declaratory Judgment of Unenforceability)

24. Plaintiff incorporates by reference Paragraphs 1-23, above, as if fully set forth herein.

25. A search of the publicly available file history for the '959 Patent reveals that Catanzaro filed a Terminal Disclaimer dated August 27, 2001, to obviate a double patenting rejection over U.S. Patent No. 6,026,532 (the "'532 Patent"). In the Terminal Disclaimer, Catanzaro agreed "that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned." The application 09/505,791, to which the Terminal Disclaimer applies, issued as the '959 Patent on February 2, 2010. A copy of the Terminal Disclaimer is attached hereto as **Exhibit E**.

26. A search of the U.S. Patent and Trademark Office's assignment database reveals that Catanzaro assigned his entire interest in the '532 Patent to Church & Dwight Co., Inc. by way of an assignment executed on February 28, 2011 and recorded June 9, 2011. A copy of the recorded assignment is attached hereto as **Exhibit F**.

27. The '959 Patent has, at no time, been assigned to Church & Dwight Co., Inc.

28. As of February 28, 2011, the '959 Patent no longer maintained common ownership with the '532 Patent.

29. The '959 Patent expired on February 28, 2011.

30. The '959 Patent cannot be revived or reactivated by later assignments.

PRAYER FOR RELIEF

WHEREFORE, DSF&G prays for the following relief:

A. A declaration that DSF&G has not infringed, either directly or indirectly, any valid and enforceable claim of the '959 Patent;

B. A declaration that the '959 Patent is invalid;

- C. A declaration that the '959 Patent is unenforceable;
- D. Enjoin Catanzaro and his representatives, and any successors and assigns thereof, from charging or asserting infringement of any claim of the '959 patent against DSF&G or anyone in privity with DSF&G;
- E. An order declaring that DSF&G is a prevailing party and that this is an exceptional case, awarding DSF&G its costs, expenses, disbursements, and reasonable attorney's fees under 35 U.S.C. § 285, recent precedent promulgated by the United States Supreme Court in *Octane Fitness*, and all other statutes, rules and common law;
- F. That Catanzaro be ordered to pay all costs associated with this action; and
- G. That DSF&G be granted such other and additional relief as the Court deems just and proper.

JURY DEMAND

31. DSF&G hereby demands a trial by jury on all issues triable of right by jury.

FITZPATRICK LENTZ & BUBBA, P.C.

Date:

1/27/2017

BY:



Douglas Panzer

PA Bar I.D. #203354

Attorney for Plaintiff

4001 Schoolhouse Lane

P.O. Box 219

Center Valley, PA 18034-0219

(610) 797-9000